Supreme Court, U.S.
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No. 95-1180 JAN 23 1996

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In The

Supreme Court of the United States

October Term, 1995

ROLAND A. JONES,

Petitioner,

vs.

FULTON COUNTY, GEORGIA,
BOARD OF COMMISSIONERS, et. al.,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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59 pp

QUESTIONS PRESENTED

I. Whether the 11th Circuit Court of Appeals' decision is in conflict with this Court's *Hains v. Kerner*, and a *pro se's* due process where:

(a) the district court holds based on its unilateral belief that purchase orders must be approved by the Fulton County Board of Commissioner, and placed in its minutes, before it is payable, when the respondent and his Contracting Officer say this is not true,

(b) the district court scolds respondents' lawyer for not making legal arguments; while also saying it will not make arguments for "trained counsel"; then, it makes the arguments for the "trained counsel"; and then grants the "trained counsel" summary judgment based on the legal arguments it made, all the same order,

(c) the district court found respondents' legal arguments and documentation to be "inadequate", but it grants respondents summary judgment,

(d) the court of appeals affirmed for the respondents based on the record being "inadequate", without allowing *pro se* opportunity to make the record "adequate"?

II. Whether this Court's *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) permits lower courts to adjudicate fewer than all *pro se* claims and terminate the action, where:

(a) the respondents did not dispute *pro se's* constitutional and discrimination claims, and where

(b) the court of appeals' decision is in conflict with its own previous summary judgment decisions?

LIST OF PARTIES

A list of parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Roland A. Jones	**Petitioner**
Michael J. Lomax **Commissioner** **Fulton County, Georgia**	**Respondent**
Robert J. Regus **Assistant County Manger,** **Fulton County, Georgia**	**Respondent**
Frank W. Bockman **Director,** **Department of Public Buildings,** **Fulton County, Georgia**	**Respondent**
Roland B. Welmaker **Deputy Director,** **Department of Public Buildings,** **Fulton County, Georgia**	**Respondent**
Jacqueline S. Groover, Assistant **Staff Counsel, Bar # 00 1 3 1 0,** **Fulton County, Georgia**	**Respondent**
Franklin N. Biggins	**Attorney for respondents.**

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Pro se petitioner, Roland A. Jones, respectfully prays that a writ of certiorari be issued to review the *per curiam* judgment and opinions of the United States Court of Appeals for the Eleventh Circuit, issued in this case.

OPINION BELOW

The opinion of the court of appeals of which review is sought is "unpublished" (App. A, p. 1a).

STATEMENT OF JURISDICTION

The opinion of the Court of Appeals was entered on July 14, 1995. (App. A, p. 1a). The court of appeals denied the petition for rehearing on October 25, 1995. (App. B, p. 4a.). The Court's jurisdiction is invoked under 28 U.S.C. 1254(1). Jurisdiction in the district court was invoked under 28 U.S.C. 1345. Jurisdiction is also invoked pursuant to 28 U.S.C. 1343 (1970), 29 U.S.C. S 151 et seq. (1970) and 42 U.S.C. 2000e et seq., as amended (Supp. II, 1972); and by 42 U.S. C. which conferred jurisdiction in civil matters on the courts, as specifically conferred by 42 U. S. C. 2000e-5, and equitable relief specifically conferred by 42 U. S. C. 2000e-5(g) providing for injunctive and other relief against discrimination on the basis of race.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First Amendment as it provides for the right to petition government officials with grievances; the Fifth Amendment as it provides for due process, prohibition against discrimination, and against the taking of private property for public use without just compensation; the Thirteenth Amendment as it provides against discrimination, and against slavery and involuntary servitude; the Fourteenth Amendment as it provides for due

process and a prohibition against discrimination; the 14th Amendment and 42 U. S. C. 1983 as they provide for the redress of deprivation of rights under color of law; 42 U. S. C. 1981 as it provides for the equal rights for all persons in every state and territory within the jurisdiction of the United States, and against discrimination; 42 U. S. C. 1985 as it provides for relief from conspiracy to deprive persons of their civil rights, and against discrimination; 42 U.S. C. Sec. 1988 as it provides for the protection of all persons in their civil rights, and against discrimination; the Civil Rights Acts of 1866; Georgia Code Ann. 3-704, providing for twenty (20) years for the redress of discrimination; the State of Georgia Open Records Act; and the Code of Laws of Fulton County as it provides for a policy that a minority business enterprise ("MBE") "shall have the maximum opportunity to participate in County projects".

STATEMENT OF THE CASE

A writ of certiorari is requested to allow this Court to review the court of appeals' opinion (App. A, p. 1a) which determined that *pro se's* claims lacked merit. A summary of the case, background facts, and proceedings follows:

I.
Case

The record references, below, where "R" indicates the record reference of the District Court Docket Sheet, and where "RE" indicates the Record of Excerpts provided to the court of appeals, have been left in tact to show this Court that the *pro se* facts, evidence, and case law had been brought to the attention of the court of appeals, and to show they were not considered. (App. A, p. 1a).

The *pro se* questions raised in this petition are of great importance to the bench and *pro se* litigants in the 11th

Circuit, for they ask this Court to enforce its *Hains v. Kerner*, 404 U.S. 519 520-21 (1972), concerning *pro se* matters, *Celotex Corp. v. Catrett*, 477 U. S. 317 (1986), 325 concerning summary judgments, and *Chappell v. Wallace*, 462 U.S. 296, at 303, in *Roland A. Jones v. Secretary of the Army*, Supreme Court #95-990, currently pending before this Court where, in the same district court, the lawyer admitted/ acknowledged on two (2) occasions that her clients violated the law, yet *pro se* was not allowed to prevail. Since the same district court is involved, there is a pattern of pro se bias between this case and *Jones v. Secretary of the Army*.

After a complaint is filed, an unrepresented litigant is treated as a non-person/non-participant in the 11th Circuit. The intent of this Court's *Hains*, which quotes *Conely v. Gibson*, 355 U.S. 41, 45- 46, 78 S.Ct. 99, 101-102, 2 L.Ed.2d. 80, 1957, reaffirmed in *Estelle*, 429 U.S. at 99, 106, 97 S.Ct. at 292, is routinely ignored in the 11th Circuit.

But for the bias against this *pro se*, the favoritism shown respondents' lawyer when his legal arguments and documentation were found to be "inadequate" by the district court, on several occasions, this *pro se* would have prevailed. It is not right where the district court scolds respondents' lawyer for not making legal arguments; while also saying it will not make arguments for "trained counsel"; then, it makes the arguments for the "trained counsel"; and then grants the "trained counsel" summary judgment based on the legal arguments it made, all in the same order. (App.L, p. 18a). This is an insult to this *pro se's* intelligence. According to *Dirt, Inc. v. Mobile County Com'n*, 739 F.2d 1562 (11th Cir. 1984) due process requires hearing by an impartial tribunal, and tribunals should avoid even appearances of impropriety.

Using the standard this Court expressed in *Hains*, "[w]e cannot say with assurance that under the allegations of the

pro se complaint . . . it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief", I request that this Court review the following, not reviewed by the court of appeals:

a.

Set Of Facts #1

Fulton County, Georgia, operates a Minority Business Enterprise ("MBE") program which provides that minority business persons "shall have the maximum opportunity to participate in Fulton County projects". With *pro se* petitioner doing business as JAR Automated Management Services, a minority business, a Fulton County Purchase Order Requisition for calendar year 1990 was approved by an African-American department head. (App. C, p. 5a):

> "As I have previously stated on November 15, 1990, I approved the continued services of Mr. Roland A. Jones for calendar year 1990. I also instructed Mr. Welmaker to execute my approval."

The approved requisition (App. D, p. 7a) was submitted to the Fulton County Purchasing Agent by the department's Contracting Officer, (App. E, p. 8a):

> "This action was requested by an authorized staff member, Roland Bernard Welmaker, and was routine in nature. . ."
>
> ****
>
> "I recall submitting the required paperwork to the Fulton County Purchasing Department for the issuance of a purchase order to Roland A. Jones d/b/a J.A.R. to be effective January 1, 1990 "

****

> "Once purchase order was generated, a receiving report form was issued to the Public Buildings Department. The receiving report was to accompany contractor's invoices for payment as approved by the Public Buildings Department. Presently, I am a Contracting Officer for the Fulton County Purchasing Department." (R1-7-"I", "16", RE).

Section 11, Georgia Law, Act 426, County Purchasing Department Created, March 27, 1941, at 412 (App. I, p. 13a), county purchase orders are payable upon receipt of the requisition by the Fulton County Purchasing Agent:

> "all purchases made by the County Purchasing Agent shall be made upon the receipt of requisitions signed by such officers and employees of the several agencies of the county...". (R2-21-1 & R2-41-"H-1"-5, "17", RE).

On January 22, 1990, the Purchasing Agent issued a Receiving Report/Purchase Order authorizing payment. of $28,008.00 for 1990 (App. F, p. 9a):

> "THIS PURCHASE ORDER AUTHORIZES PAYMENT FOR GOODS ORDERED AND/ OR SERVICES REQUESTED BY THE PUBLIC BLDGS DEPT. - OF FULTON COUNTY DURING THE CALENDAR YEAR OF 1990 . . . TO BE FURNISHED AS CALLED FOR DURING THE YEAR 1990. (R1-7-"I". and "18", RE).

The replacement Caucasian-American depa: tr.ent head (respondent Frank Bockman) refused to pay for the work performed, and on October 5, 1990, declared my work to be "strictly voluntary" (App. L, p. 19a, par. 2).

During 1990, services were called for and provided the department, as indicated by the department's supervisor for computer operations (App. G, p. 11a, par. 4):

> "During 1990, Mr. Bockman, Mr. Welmaker, and Mr. Ruby, by way of my reports to them, had full knowledge that Mr. Jones was providing services on a regular basis." (R1-11-"C"-4, and "19", 4, RE).

The district court also stated that *pro se* could file for mandamus to enforce the purchase order to spread it upon the minutes of the Commission (App. L, p. 25a, Fn 3):

> "... should plaintiff wish to enforce this purchase order, he must ... amend his complaint to seek mandamus for entry of the agreement on the minutes. . . *PMS*, 243 Ga. at 872." See Fn. 3, pp. 10. (R1-13-10-FN.3).

The complaint was amended for mandamus (R2-35), but the district court refused to grant mandamus that it said was necessary.

The lawyer provided no Georgia law, or Fulton County Code, or regulation, that was in effect during year 1990, which requires a purchase order to be approved by the Commission and placed in its minutes before it is payable. Also conversely, the lawyer's client, respondent Bockman,

stated that "Craft was given work through a purchase order . . . he also said his department enters into hundreds of similar agreements and that none of them goes before the board for approval" (App. J, p. 15a). Bockman's Contracting Officer for the department also states (App. E, p. 8a) that purchase orders do not require Board of Commissioners approval. The district court held that purchase orders must be approved by the Commission and in its "Board minutes", contrary to Bockman and his Contracting Officer (App. L, p. 25a, par 2):

> "it is undisputed that no contract between plaintiff and the County exists on the Board minutes. The Court is compelled to find that plaintiff does not have an enforceable contract with the County. . . The parties do dispute whether a purchase order for plaintiff's services was entered in January 1990."

The district court granted summary judgment for respondents. (App. M, p. 32a, at Plaintiff's Renewed Motion). The lower courts missed the point: there can be no requirement to place a purchase order in the minutes of the Commission to make it payable when there is no Georgia law, or Fulton County Code, or regulation, stating a requirement, and when the respondent (Bockman) and his Contracting Officer have state there is no requirement for a purchase order to be approved by the Commission. The no "enforceable contract" and entering it in the minutes in January 1990, as discussed by the district court, is the unsubstantiated concept of respondents' lawyer, and only his. The lawyer never substantiated his concept with documented evidence.

b.
Set Of Facts #2

Upon the nonpayment and termination of my services, the Caucasian-American (Bockman) department head would not allow me to retrieve my personnel property from the department. On September 30, 1993, the district court found (App. M, p. 31a):

> **"Plaintiff contends that defendants took his software, computer applications software, database structure, related computer reports data entry forms, and communications software without compensation."(R2-32-4, and "8", 4, RE).**

On August 31, 1992, Judge Robert H. Walling, court appointed mediator, concluded my 5th Amendment taking claim be "software tool much like a hammer a worker might bring to a job site." (R2-18, "25", RE).

The replacement Caucasian-American department head (Frank Bockman) kept and destroyed my personal property upon his refusal to pay. *Pro se* presented evidence showing that respondents kept and destroyed personal property. (App. G, p. 11a, par, 5, and App. H, p. 12a):

> **". . .while the Department owned all of the Rbase software, the programs for the specialized application of software, such as the Work Order System, the Finance and Accounting Systems, the Project Management System, the Parking Control System, the Vehicle Control and Maintenance, the Time and Expense System, among others, were designed, developed,**

> and produced by Mr. Roland A. Jones ... Mr. Jones never gave ownership of his application software to the department. His logo (JAR) always appeared on the screen of each department computer when the power was turned on." (See R1- 11-"C" and R3-44-"M" also "19", RE).

On October 22, 1992, Mr. Ruby, the Deputy Department Director, Mr. Barnes, the current supervisor of the department's computer operations, and Mrs. Duckworth, the ex-supervisor of the department's computer operations, reported by a Spreadsheet Inventory Affidavit (App. H, p. 12a), that they had found that a few of my programs (.PRC complied software tools) were still being used by the department, while the most important programs (proprietary .ASC uncompiled software tools) had been removed from the computer that was assigned to me, and destroyed (R2-22- "A", "27", RE).

The lawyer never offered any probative evidence showing that respondents were specifically entitled to keep my personal property (the tools of my trade), as the district court concluded (App. M, p. 30a):

> "Any motion that includes allegations of fact must include supporting affidavits. Fed. R. Civ. P. 56(e) (f). . .Thus, defendants' arguments opposing the factual basis of plaintiff's Fifth Amendment taking claim are only unsubstantiated allegation that cannot support a motion for summary judgment." (R2-32-4, see also "8", 4. RE).

****

> "Defendants have failed to offer evidence showing what property belonged to plaintiff. Defendants have also failed to argue or show that if any of plaintiff's property was retained by defendants. . ." (App. M, p. 32a).

The district court's conclusion of law (App. L, p. 23a, Fn. 2):

> "While most 5th Amendment takings cases examine the acquisition of real property, the protection is afforded the personal property of citizens as well. *Weiner v. Fulton County*, 113 Ga. App. 343, 346 (1966)." (See R1-13-7).

Though my *pro se* facts, evidence, and law, showed the respondents took the tools of my trade, and the respondents' "legal arguments and documentation" were found to be "inadequate", respondents were allowed to prevail.

c.

Set Of Facts #3

On two (2) occasions, the district court found the lawyer's legal arguments and documentation to be "inadequate" . (App. K, p. 16a, and App. M, p. 29a, Fn. 1).

Though "Jones" never contended that the attorney for the respondents admitted anything (the attorney "stipulated", morefully shown below), and though "Jones" never has contended entitlement to judgment based on the terms of the 1985-1989 contracts (it is respondents who alleged that they are entitled to keep my property based on the terms of the 1985-1989 contracts), the court of appeals affirmed for the respondents:

> "Jones also contends (1) that the attorney for the County admitted that the 1990 purchase order for Jones' services had been approved and (2) that Jones is entitled to judgment on his Fifth Amendment taking claim based on the terms of the 1985-1989 contracts. The record on appeal is not adequate to enable this Court to review these challenges to the district court's findings and holdings. Accordingly, we AFFIRM as to these issues . . . (in the absence of a complete record, the Court cannot adequately review challenged findings and, therefore, must affirm)." (App. A, p. 3a).

The lawyer stipulated as an undisputed fact, that the purchase order requisition was approved (R1 - 11 -"B" & R2-23-5-7, "9", Undisputed Fact "7", 7, RE) (See also Appellees Brief):

> "In December, 1989, Clarence Reid, Director of the Fulton County Public Buildings approved Purchase Order Requisition, #14383, to provide . . . consulting services by Roland A. Jones. . .", and
>
> ****
>
> "The services which Roland A. Jones provided to Fulton County . . . were for the benefit of . . . the Fulton County Public Buildings Department." R3-41-"E"-3-12).

d.
Set Of Facts #4

The respondents did not dispute pro se's discrimination claims, brought under the 5th, 13th, 14th Amendments, 42 U. S. C. Sections 1981, 1983, 1985 , 1988, the Civil Rights Acts of 1866; and did not dispute claim brought under the 14th and 42 U. S. C. 1983, as they provide for the redress of deprivation of rights under color of law. Default judgment is appropriate, as a matter of law.

e.
Set Of Facts #5

The district court made the arguments for the lawyer on 13th, 5th and 14th Amendment Due Process and Equal Protection claims.

REASONS FOR GRANTING THE WRIT

As stated earlier, the *pro se* questions raised in this petition are of great importance to the bench and *pro se* litigants in the 11th Circuit. The summary judgment adjudicated fewer than all claims; and is in direct conflict with this Court's *Celotex*, and in conflict with summary judgment decisions of the courts of appeals, itself:

I.
THE COURT OF APPEALS ADJUDICATED FEWER THAN ALL CLAIMS

The summary judgment adjudicated fewer than all of my claims, according to the general rule that:

> **[A]ny order or other form of decision, however, designated, which adjudicates fewer than all the claims ... shall not**

terminate the action as to any of the claims.

a.
Discrimination Not Adjudicated

The district court and the court of appeals orders do not show that *pro se*'s discrimination claims, brought under the 5th, 13th, 14th Amendments, 42 U. S. C. Sections 1981, 1983, 1985 , 1988, the Civil Rights Acts of 1866, though found by the district court as disputed by the respondents (as shown below), were ever adjudicated.

b.
Government Official(s) Acting Illegally Under Color Of Law Claim Not Adjudicated

Though both sides submitted "qualified immunity" arguments, pro and con, (R42 and 44), the district court and the court of appeals orders do not show that *pro se*'s claim brought under the 14th and 42 U. S. C. 1983, as they provide for the redress of deprivation of rights under color of law, was ever adjudicated.

II.
THE COURT OF APPEALS DECISION IS IN CONFLICT WITH THIS COURT'S *CELOTEX CORP. V. CATRETT*

The court of appeals should have granted summary judgment for *pro se*, and should not have affirmed summary judgment for the respondents. On respondents first "bite at the apple", the district court concluded (App. K, p. 16a):

> "Defendants response is inadequate . . .for its failure to address all of plaintiff's claims." (R1-8-1, and "3", RE).

On respondents third "bite at the apple", the district court concluded (App. M, p. 30a, par. 2):

> "... the Court again found defendants'... legal arguments and documentation inadequate." (R2-32-3-FN1, and "8",RE).

The court of appeals decision is in conflict with this Court's *Celotex Corp. v. Catrett*, 477 U. S. 317 (1986), 325. In *Celotex*, this Court held that summary judgment shall be granted if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law, and this burden could be met if the moving party demonstrates "that there is an absence of evidence to support the non-moving party's case." Id. at 325.

a.

Summary Judgment Should Have Been Granted Pro Se On The Purchase Order And 5th Amendment Taking Claim When Summary Judgment Was First Filed

The *Celotex* burden was carried by pro se in that it was demonstrated that the purchase order was approved, issued, and not paid by the respondents; respondents took personal property (tools of my trade), used them and destroyed the balance. Based these, summary judgment should have been granted *pro se*, as a matter of law.

Though this Court's *Celotex* provides that at this point the burden shifts to the non-moving party (respondents) to go beyond the pleadings and present specific evidence giving rise to a triable issue. This was not done by the respondents where the district court found:

> "Defendants response is inadequate . . .for

its failure to address all of plaintiff's claims." (R1-8-1, and "3", RE).

b.

Summary Judgment Should Have Been Granted Pro Se When Respondents Did Not Dispute

When the respondents did not dispute, the district court unfairly made-up arguments for the respondents on my 13th, 5th and 14th Amendment Due Process and Equal Protection claims. I pray that this Court will agree that it is not right where the district court scolds respondents' lawyer for not making legal arguments,

> "Even more surprising, defendants, in their second attempt. .. argue that the only issue in this action, despite plaintiff's numerous constitutional challenges, is whether plaintiff has an enforceable public contract. Almost as if in passing, defendants argue against all constitutional challenges in one paragraph by stating that `[t]here is absolutely no proof in the record to support or sustain plaintiff's contentions'" (R1-13-5-1, "7",5, RE). (App. L, p. 21a),
>
> ****
>
> "Defendants' primary argument in response to plaintiff's due process charges . . .is that because plaintiff did not have an enforceable public contract with the County. . ." (R1- 13-8, see also "7", 8, RE). "Defendants do not even attempt to respond to plaintiff's 1st Amendment claim in their cross-motion, nor do they include the

> claim in their request for summary judgment" (R1 - 13 - 11, "7",11, RE). (App. L, p. 26a);

while also saying it will not make arguments for "trained counsel"; then, it makes the arguments for the "trained counsel"; and then grants the "trained counsel" summary judgment based on the legal arguments it made, all in the same order. (App. L, p. 23a-26a). Summary judgment should have been granted *pro se* when the district court had found that the lawyer for the respondents did not dispute the legal and factual issues of this *pro se*'s constitutional and statutory claims (App. L, p. 21a).

III.
SUMMARY JUDGMENT IS IN CONFLICT WITH COURT OF APPEALS' OWN DECISIONS

In analyzing a motion for summary judgment, a court must view the facts in the light most favorable to the nonmoving party, and make all factual inferences in favor of that party. *WSB-TV v. Lee*, 842 F.2d 1266, 1270 (11th Cir. 1988); *Hairston v. G-ainesville Sun Publ. Co.*, 9 F.3d 913, 918 (11th Cir. 1993). The Court will make credibility assessments or weigh conflicting evidence. Id. at 919. "Where a reasonable fact finder may 'draw more than one inference from the facts, and that inference creates a general issue of material fact, then the court should refuse to grant summary judgment." Id. (quoting *Barfield v. Brierton*, 883 F.2d 923, 933-34 (11th Cir. 1989)). Nevertheless, the Court is required to make only reasonable factual inferences in favor of the nonmoving party. *Irby v. Bittick*, 44 F.3d 949, 953 (11th Cir. 1995). "A genuine issue of material fact does not exist unless there is sufficient evidence favoring the nonmoving party for a reasonable jury to return a verdict in its favor." *Haves v. Miami*, 52 F.3d 918, 921 (11th Cir. 1995).

CONCLUSION

Since this Court is the creator of *Hains* and its progenies, and since the district court and the court of appeals have refused to honor this Court's *Hains*, it is incumbent upon this Court to review my *pro se* facts, evidence, and law. *Pro se* petitioner respectfully prays that this Court will not allow the 11th Circuit to bring down the long-standing right for a person to represent his or herself, and will not allow the 11th Circuit to perpetuate for other *pro se* petitioners what it has done to me. *Pro se* petitioner prays that this Court will enforces its *Hains*, *Celotex*, and *Chappell*.

This Court, being the Court of last resort, I request that the Court REVERSE the decision of the court of appeals which affirms for the respondents, and Grant summary judgment for *pro se*; that the respondents be required to make payment in the full amount of the purchase order for my work performed in 1990; that the respondents be required to pay damages for the illegal taking and destruction of my personal property; and that the respondents be required to pay damages for discrimination and other claims that they did not dispute.

Respectfully submitted,
Roland A. Jones, pro se
1390 Heatherland Dr.
Atlanta, Georgia 30331
(404) 344-1332

APPENDIX A-- COURT OF APPEALS ORDER, DATED JULY 14, 1995.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 95-8112
Non-Argument Calendar
D. C. Docket No. 1:91-CV-78-MHS

ROLAND A. JONES,

Plaintiff-Appellant,

versus

FULTON COUNTY, FULTON COUNTY BOARD OF COMMISSIONERS,-DEPARTMENT OF.PUBLIC BUILDINGS, MICHAEL j. LOMAX, GORDON L. JOYNER, ROBERT J. REGUS, FRANK M. BOCKMAN, ROLAND B. WELMAKER, JACQUELINE S. GROOVER, Assistant Staff Counsel,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Georgia (July 14, 1995)

Before BIRCH and BLACK, Circuit Judges, and JOHNSON, Senior circuit Judge.

PER CURIAM:

In January 1991, Roland A. Jones brought this suit pursuant to 42 U.S.C.A. § 1983 (West 1994) against Fulton County, the Board of Commissioners of Fulton County, the Department of Public Buildings, Michael J. Lomax, Gordon L. Joyner, Robert J. Regus, Frank W. Bockman, Roland B. Welmaker, and Jacqueline S. Groover (collectively, "Appellees"), alleging civil rights violations related to Jones 1985-1989 contracts with the County and to the County's nonpayment for services Jones rendered from January 1990 to June 1990. Specifically, Jones alleged violations of the First, Fifth, Thirteenth, and Fourteenth Amendments, as well as violations of the Fulton County Minority Enterprise Program.

The parties filed cross-motions for summary judgment. In June 1991, the district court granted Appellees' motion for summary judgment on Jones' Fifth and Fourteenth Amendment due process and equal protection claims and on his Thirteenth Amendment involuntary servitude claim. The district court denied Jones' motion for summary judgment as to these claims. Remaining were Jones' First Amendment claim (alleging that Appellees suppressed his right to petition the government for redress of his grievances) and his Fifth Amendment takings claim. In September 1994, a bench trial was held on the remaining claims, and judgment was entered for Appellees.

On appeal, Jones contends that (1) the district court exhibited bias against him because of his *pro se* status; and (2) the district court erred in denying his motions for summary judgment on his First Amendment claim and his due process claim.1 After careful review of the record, we conclude that these contentions lack merit.

AFFIRMED.

---

1 Jones also contends (1) that the attorney for the County admitted that the 1990 purchase order for Jones' services had been approved and (2) that Jones is entitled to judgment on his Fifth Amendment takings claim based on the terms of the 1985-1989 contracts. The record on appeal is not adequate to enable this Court to review these challenges to the district court's findings and holdings. Accordingly, we AFFIRM as to these issues. See United States v.- Dallas County Commission, 739 F.2d 1529, 1539-40 (llth Cir. 1985) (in the absence of a complete record, the Court cannot adequately review challenged findings and, therefore, must affirm).

APPENDIX B-- COURT OF APPEALS DENIAL OF PETITION FOR REHEARING, DATED OCTOBER 25, 1995.

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

ROLAND A. JONES,

Plaintiff-Appellant,

versus

FULTON COUNTY, FULTON COUNTY BOARD OF COMMISSIONERS,-DEPARTMENT OF.PUBLIC BUILDINGS, MICHAEL j. LOMAX, GORDON L. JOYNER, ROBERT J. REGUS, FRANK M. BOCKMAN, ROLAND B. WELMAKER, JACQUELINE S. GROOVER, Assistant Staff Counsel,

Defendants-Appellees

On Appeal from the United States District Court for the Northern District of Georgia

---

BEFORE: BIRCH and BILACK, Circuit Judges, and JOHNSON, Senior Circuit Judge.

PER CURIAM:

The petition(s) for rehearing filed by Appellant, ROLAND JONES, is DENIED.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE ORD-41

APPENDIX C-- AFFIDAVIT OF MR. CLARENCE REID, AFRICAN-AMERICAN DIRECTOR OF THE DEPARTMENT OF PUBLIC BUILDINGS.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROLAND A. JONES
Plaintiff,

VS. **CIVIL ACTION FILE**
NO. 1:91-CV-0078-MHS

Fulton County, et. al.
Defendants.

CIVIL ACTION FILE
NO. 1:91-cv-0078-MHS

AFFIDAVIT OF MR. CLARENCE REID
DEPARTMENT OF PUBLIC WORKS
FULTON COUNTY, GEORGIA

COMES NOW CLARENCE REID who under oath deposes and states as follows:

1.

That I am Clarence Reid and the facts contained herein are true and correct to the best of my knowledge and belief.

2.

As the Director of the Department of Public Buildingst Fulton County,v Georgia,, Mr. Roland A. JoLnes worked under my guidance and supervision from August 28, 1985, to December 31, 1989.

3.

During the above periodp I was not, in any way, dissatisfied with the services provided to my department by Mr. Jones.

4.

As I have previously stated on November 15th 1990, I approved the continued services of Mr. Roland A. Jones for calendar year 1990. I also instructed Mr. Welmaker to execute my approval.

s/ Clarence Reid

Sworn to and subscribed before me
this 5th day of July, 1991.

s/ Gale Ward
Notary Public.

My Commission expires March 7, 1994.

[FULTON COUNTY SEAL]

APPENDIX D-- FULTON COUNTY PURCHASE ORDER REQUISITION DATED JANUARY 11, 1990.

REQUISITION

No.: 14383

DATE: 01/11/90 ACTION: U RESP. AGENCY: 5201 RESP. ORG: 52001 ORG. NAME: Purchasing Buildings

VENDOR CODE: DAKS00C089701

REQUESTED BY: Shelandra R Cartwright

NAME: D A K

PHONE: 730 5900

ADDRESS: 1390 Hartsfield Drive

DEL DATE: 01/31/90

Atlanta GA 30336

DEL LOC/RM: Suite 6085

RESP. PERSON: R B Wehmeyer

CONTACT: Roland Jones

PHONE: 404 344 1332

EMERGENCY: U

COMMENTS: Service Contract 110

LN	FUND	AGENCY	ORG	SUB ORG	ACTIVITY	OBJ	SUB OBJ	JOB #	CAT/GRANT	TOTAL
001	10001	5401	52001			6200	00			280,38.00

LN	QTY	QTY UO	UNIT	COMMODITY CODE	CATALOG #	UNIT COST	COST UO	TOTAL COST
001	1.00000	U	EA	91-20700-0000		2334.400	U	2334.40

DESCRIPTION: Development, Expansion and Refinement TEXT

DESCRIPTION: of Automated Management Information System TI

DESCRIPTION: TEXT

DESCRIPTION: TEXT

DESCRIPTION: TEXT

DESCRIPTION: TEXT

DESCRIPTION: TEXT

FORM 230 005-88

REQUESTING DEPARTMENT AUTHORIZED SIGNATURE R B Wehmeyer

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APPENDIX E-- AFFIDAVIT, MRS. CORNICK

AFFIDAVIT

As an Administrative Assistant III for the Fulton County Public Buildings Department (5/86 through 11/92) my primary responsibilites were to process all paperwork related to contract. To the best of my knowledge, I recall submitting the required paperwork to the Fulton County Purchasing Department for the issuance of a purchase order to Roland A. Jones d/b/a J.A.R. to be effective January 1, 1990. This action was requested by an authorized staff member, Roland Bernard Welmaker, and was routine in nature. Purchase orders were approved by the Purchasing Agent (approval by the County Manager and/or Board of Commissioners was not required). Once a purchase order was generated, a receiving form was issued to the Public Buildings Department. The receiving report was to accompany contractor' s invoices for paymeny as approved by the Public Buildings Department.

Presently, I am a Contracting Officer for the Fulton County Purchasing Department. Although the way contracts are processed for Fulton County has been revised, the purchasing department is still a part of the contract process.

s/ Shelandra P. Cornick
Shelandra P. Cornick

Minnie Manuel
Notary Public
July 25, 1994
Commission Expires: 03-02-97

[FULTON COUNTY SEAL]

APPENDIX F-- FULTON COUNTY RECEIVING REPORT/PURCHASE ORDER DATED JANUARY 19, 1990.

PROG ID: AMS0841

FULTON COUNTY
RECEIVING REPORT
DATE: 01/19/90

PAGE: 1

RR NO: _____
PG NO: 9014383

PO NO: SC 520 9014383
RX NO: RX 520

VENDOR NO: JAR8500089P
VENDOR NAME: ROLAND A JONES DBA JAR
ADDRESS: 3390 HEATHERLAND DR

ATLANTA GA 30331
CONTACT: ROLAND A JONES
PHONE NO:404-344-1332

SPECIAL INSTRUCTIONS:

REQUESTED BY:
ORG NO: 5201
ORG NAME: PUBLIC BUILDINGS - A
PHONE:
DEL DATE: 12/31/90
SHIP TO: PSU FOB: BUYER: 14
DEL. BLDG/RM:
PUBLIC BUILDINGS
RESPONSIBLE PERSON: BERNARD WELMAKER

ORD LN	ONTY ORD	ONTY REC	ONTY OUT	UNIT	I/D	UNIT COST	TOT COST	COMMODITY CODE
001	28,008.000		28008.000			1.000	28008.00	96120000000

DESCRIPTION: MISCELLANEOUS PROFESSIONAL SERVICES
CONSULTING (NOT OTHERWISE CLASSIFIED)

P/F TEXT QTY REC REC DATE

THIS PURCHASE ORDER IS NOT TO EXCEED 28,008.00 FOR THE YEAR OF 1990.

THIS PURCHASE ORDER DOES NOT CONSTITUTE AN OFFER OF OR AGREEMENT BY FULTON COUNTY TO PURCHASE GOODS AND/OR SERVICES FOR TOTAL CONSIDERATION OF ANY SPECIFIC AMOUNT WHATSOEVER. THIS PURCHASE ORDER AUTHORIZES PAYMENT FOR GOODS ORDERED AND/OR SERVICES REQUESTED BY THE PUBLIC BLDGS DEPT. - OF FULTON COUNTY DURING THE CALENDAR YEAR OF 1990; PROVIDED, HOWEVER, THAT THE TOTAL COST OF ALL GOODS AND/OR SERVICES REQUESTED HEREUNDER SHALL NOT EXCEED THE AGGREGATE TOTAL OF 28,008.00 WITHOUT ISSUSANCE BY FULTON COUNTY PURCHASING DEPARTMENT OF A WRITTEN CHANGE ORDER

ALL ORDERS PLACED AND/OR SERVICES REQUESTED HEREUNDER ARE SUBJECT TO VERIFICATION AND DELIVERY MUST BE CONFIRMED IN WRITING BY AN AUTHORIZED OFFICIAL OF THE PUBLIC BLDGS. DEPT OF FULTON COUNTY.

TO BE FURNISHED AS CALLED FOR DURING THE YEAR 1990.

CONDITION: _____ _____ __/__/__

PLEASE RETURN THIS COMPLETED FORM TO MATERIEL CONTROL

RECEIVED BY: _____ ACCEPTED BY: _____ ENTERED BY: _____

DATE: __/__/__ DATE: __/__/__ DATE: __/__/__

RECEIVED
JAN 22 1991

BEST AVAILABLE COPY

APPENDIX–G AFFIDAVIT, MRS. RENEE DUCKWORTH, DATED JULY 5, 1991.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**ROLAND A. JONES
Plaintiff,**

VS. **CIVIL ACTION FILE
NO. 1:91-cv-0078-MHS**

**Fulton County, et. al.
Defendants.**

**AFFIDAVIT OF MRS. RENEE DUCKWORTH
DEPARTMENT OF PUBLIC BUILDINGST JUNE 1984
TO AUGUST 1990 FULTON COUNTY GEORGIA**

COMES NOW RENEE DUCKWORTH who under oath deposes and states as follows:

1 .

That I am Renee Duckworth and the facts contained herein are true and correct to the best of my knowledge and belief.

2.

As the Program Coordinator and supervisor for the day to day operation of the department's automated data management systems during all of the time that Mr. Roland A. Jones was employed by the department, I worked closely with him on a day to day basis.

3.

During all of the years that I worked with Mr. Jonesr I was never dissatisfied with his work and I did not file any complaints concerning his work with Mr. Clarence Reid,

Mr. Frank Bockman, Mr. Bernard Welmaker, or Mr. William Ruby.

4.

During 1990, Mr. Bockman, Mr. Welmaker, and Mr. Ruby, by way of my reports to themr had full knowledge that Mr. Jones was providing services on a regular basis. I am also aware of facts concerning the approval of his services for 1990.

5.

The department owned all of the Rbase software, and I was responsible for the accountability for this software. However, the programs for the specialized application software, such as the Work Order System,, the Finance and Accounting System, the Electronics Maintenance System,, the Project Management System, the Parking Control System, the Vehicle Control and Maintenance, the Time and Expense System, among others, were designed, developed, and produced by Mr. Roland A. Jones. To the best of my knowledge, Mr. Jones never gave ownership of his application software to the department. His Logo (JAR) always appeared on the screen of each department computer when the power was turned on.

/s Renee Duckworth
Renee Duckworth

Sworn and subscribed before me
this 5 day of July, 1991.

/s Ruby C. Murry
Notary Public

Notary Public, Dekalb County, Georgia
My Comnission experies June 27, 1992
[DEKALB COUNTY SEAL]

APPENDIX H– AFFIDAVIT, OF DEPUTY DIRECTOR WILLIAM RUBY, DENNIS BARNES, AND MRS. RENEE DUCKWORTH, STATUS OF MY PERSONAL PROPERTY AS OF OCTOBER 22, 1992.

STATUS OF COMPUTER CODES, PROPERTY OF ROLAND A. JONES, ON FULCO PUBLIC BUILDINGS COMPUTERS AS OF OCTOBER 22, 1992

	1DIR	WORD PROCESSING	TOOLS, DISK OPTMIZER	TOOLS, RBASE 5000	TOOLS, RBASE SYS V	TOOLS, REMOTE TERMINAL	PROGRAMS, ASSETS/ FINANCE/ BUDGET SY	PROGRAMS, MAINT WORKORDER SYSTEM	PROGRAMS, INVENTORY CONTROL SYSTEM	PROGRAMS, PARKING CONTROL SYSTEM	PROGRAMS, PROJECT MGMT SYSTEM	PROGRAMS PERSONNEL MGMT SYSTEM
FULCO COMPUTER USED BY ROLAND A. JONES	DES-TROY ED.	DESTROYED BY PUBLIC BUILDINGS.	DES-TROYED BY PUB-LIC BLDGS.	DES-TROYED BY PUB LIC BLDGS.	DES-TROYED BY PUB LIC BLDGS.	DES-TROYED BY PUB-LIC BLDGS.	DESTROYED BY PUBLIC BLDGS.	DESTROYED BY PUBLIC BLDGS.	DESTROYED BY PUBLIC BLDGS.	DESTROYED BY PUBLIC BLDGS.	DESTROYED BY PUBLIC BLDGS.	DESTROYED BY PUBLIC BLDGS.
COMPUTER USED BY DOCKWORTH FOR MAINT	DES-TROY ED	DESTROYED BY PUBLIC BLDGS.	DES-TROYED BY PUB-LIC BLDG					FOUND/RTN .PRC FILE LAST USED 5/21/91				
COMPUTER JAIL MAINT	DES-TROY ED							DESTROYED BY PUBLIC BLDGS.				
COMPUTER USED FOR JUVENILE Ct. MAINT	DES-TROY ED							DESTROYED BY PUBLIC BLDGS.				
COMPUTER USED FOR SUPERIOR Ct. MAINT	DES-TROY ED							DESTROYED BY PUBLIC BLDGS.				
COMPUTER ELECTRO-NICS/TRA-FFIC LT MAINT	DES-TROY ED							DESTROYED BY PUBLIC BLDGS.				
COMPUTER #1 ASSETS BUDGET, FINANCE	FOU ND/ RTND	FOUND/ RETURNED. LAST USED UNK.					DESTROYED BY PUBLIC BLDGS.					
COMPUTER #2 ASSETS BUDGET, FINANCE	DES-TROY ED.						DESTROYED BY PUBLIC BLDGS.					
COMPUTER1 INVENTORY CONTROL	DES-TROY ED								FND/RTND. LAST USED 2/4/91			
COMPUTER2 INVENTORY CONTROL	DES-TROY ED								DESTROYED BY PUBLIC BLDGS.			
COMPUTER BOCKMAN'S SECRETARY	FND/ RTND									FND/RTND. STILL IN USE BY PB		
COMPUTER USED FOR PROJ MGMT	UNK										UNK	
COMPUTER PERSONNEL MGMT	FND/ RTND											FND/RTND. STILL IN USE

NOTE 1: ALL .ASC TEXT CODES DESTROYED WHEN HARD DISK ON COMPUTER USED BY ROLAND A. JONES WAS REFORMATTED.
NOTE 2: COPY OF REMAINING .PRC (COMPILED) CODES PROVIDED ROLAND A. JONES. FULCO RETAINED POSSESSION OF COPY PER INSTRUCTIONS MR. BIGGINS.

VERIFIED BY: William Ruby
Asst Dir.
Pub. Bldgs.

BY: [signature]
Tax Assessors Division

BY: Renee Duckworth
Admin. Asst. I
Fulton Public Bldgs.

[FULTON COUNTY SEAL]
Minnie Manuel
Expires: 3-4-93
October 23, 92

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APPENDIX I-- REDACTED GEORGIA LAW ON PURCHASE ORDERS

408

PART I -TITLE VI-GENERAL CIVIL AND PENAL LAW

County Purchasing Department Created.

COUNTY PURCHASING DEPARTMENT CREATED.
No. 426.

An Act to create and establish a Purchasing Department in all counties of this State having a population of two hundred thousand or more by the United State census of 1940 or by any future United States census; to authorize the employment in such counties of a County Purchasing Agent; to fix his bond, compensation and terms of office; to define his duties; to provide for the employment by the county authorities of such assistants to the County Purchasing Agent as may be necessary to maintain and carry out the functions of a county purchasing department; to provide for the filling of vacancies in the office hereby created; and for other purposes.

Be it enacted by the General Assembly of the State of Georgia and it is hereby enacted by authority of the same:

****

412

Section 11. No expenditure for work, labor, supplies, materials or equipment under contract shall be made unless the necessity thereof be certified to by the agency for the use of which they are intended. All purchases made by the County Purchasing Agent shall be made upon the receipt of requisitions signed by such officers and employees of the

several agencies of the county as may be designated for that purpose by the Board of Commissioners of Roads or other county authority.

APPENDIX J--NOVEMBER 24, 1990, RESPONDENT FRANK BOCKMAN, IN ATLANTA JOURNAL-*CONSTITUTION, STATING PURCHASE ORDERS DO* NOT REQUIRE BOARD OF COMMISSION APPROVAL

AT, NOVEMBER 24, 1990 ....

Fulton: Some officials, other bidders raise questions

▶ Continued from A1

Mr. Elder did not return numerous phone calls this week.

Craft, which cleans several county buildings, has been handling Government Center for more than a year while the county prepared to take bids on the work.

Commissioners Tom Lowe and Gordon L. Joyner — and at least three of the bidders that lost out on the job — have questioned the manner in which Craft won the work.

Mr. Joyner called the selection process "improper and a terrible way to run a county government. A $1 million contract is something that this board should have come before it. That's not a decision that should be made at the staff level."

Dust-Away Inc. of Atlanta, a losing bidder on the Government Center job, told county officials in a letter that Craft was "a shocking choice."

"We call for a correction of the process which could allow such a breach of the public trust as this situation," said the Nov. 5 letter, signed by three Dust-Away officials.

Although the county advertised for bids on Government Center, county staff members handled the selection without putting the matter to the commission for a vote. Craft's fee, $85,843 a month, was the highest of 11 proposals, according to county Purchasing Department records.

Craft's bid offered three cost options — a "basic" package, with the minimal services the county asked for, and two optional packages offering more services at higher prices.

Craft's "basic" bid was for $64,392 monthly — the highest basic bid submitted by the 11 contractors. The low basic bid, $31,896, was submitted by Commercial Office Maintenance Corp. The county opted for Craft's middle bid, records show.

The agreement covers 12 months, with renewal options for another 24 months, giving it a value of $1,030,116 for the first year and a total of $3,090,348 over its potential three-year duration.

Craft was given the work through a purchase order dated Nov. 2, purchasing records show.

Commissioners Lowe and Joyner last week asked the county attorney to review the transaction after learning the job was awarded through a purchase order, bypassing the commission.

County Attorney Elizabeth F. Long said she has not researched the law governing the county's selection of services of this kind, but she believes the county should not have awarded such a substantial amount of public money without commissioners' approval.

Craft Janitorial Inc.

Craft Janitorial Inc., an Atlanta company, was incorporated in 1986, according to state records.

Craft is owned by John Elder, president, and his wife, Erma, who is listed as chief executive officer and registered agent.

Craft specializes in cleaning and maintaining public buildings, including:

- ▶ Fulton County's alcohol-treatment center.
- ▶ The central Atlanta-Fulton County Library downtown.
- ▶ The new Fulton County Government Center.

About 40 Craft employees have worked at Government Center since it opened last year. Craft is paid about $85,843 per month for the work, or slightly more than $1 million a year.

Michael L. Lomax
His top campaign contributor had the highest bid but won a county contract.

"They never put that much out without [bids]," she said.

Fulton's director of public buildings, Frank Bockman, said his selection committee recommended that the purchasing department award the job to Craft — despite the higher price — because the company was judged best able to meet the committee's standards.

Mr. Bockman said the decision on Craft was made without any influence from the chairman's office. He also said his department enters into hundreds of similar agreements and that none of them goes before the board for approval.

"Craft Janitorial has done an excellent job in the building so far," Mr. Bockman said, adding that the company will continue on a month-to-month basis until the issue is resolved.

APPENDIX K- DISTRICT COURT ORDER # 1, DATED JUNE 24, 1991.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROLAND A. JONES,

Plaintiff **CIVIL ACTION**
V. **1:91-CV-78-MHS**
FULTON COUNTY, et al.,

Defendants

ORDER

Presently before the Court are plaintiff's motion for summary judgment and defendants' cross-motion for summary judgment. In this 1983 action plaintiff claims that defendants refuse to compensate him for consulting services he performed for defendant Fulton County (the "County") from January 1990 to May 1990 in violation of his rights under the 5th, 13th, and 14th Amendments to the Constitution. In response to plaintiff's motion for summary judgment, defendants filed a cross-motion for summary judgment with only a one page memorandum of law containing string citations concerning whether plaintiff had an enforceable public contract with the County. Defendants failed to outline for the Court the material facts which they contend are not in dispute.

Defendants response is inadequate not only for its failure to address all of plaintiff's claims, but because it fails to comply with the Locai Rules. Both a movant for summary judgment and a respondent must file, in addition to a motion

and a memorandum of law, "a separate and concise statement of the material facts to which he contends there is no genuine issue to be tried." Local Rule 220-5(b). Defendants' belief that plaintiff's claims are meritless does not relieve them of the duty to comply with the rules of this Court. In addition, failure to address the legal and factual issues in this action may result in judgment being entered against defendants.

Accordingly, the Court DEFERS RULING on plaintiff's motion for summary judgment, STRIKES defendants' cross-motion for summary judgment, and DIRECTS defendants to refile their motion for summary judgment and supporting memorandum in compliance with the Local Rules within 10 days of the date of this order.

IT IS SO ORDERED, this 24th day of June , 1991.

s/ Marvin H. Shoob
Marvin H. Shoob, Judge
United States District Court
Northern District of Georgia

APPENDIX L- DISTRICT COURT ORDER # 2, DATED MARCH 27, 1992.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROLAND A. JONES,
Plaintiff

CIVIL ACTION
1:91-CV-0078-MHS

V.

FULTON COUNTY, et al.,
Defendants

ORDER

Plaintiff brings this S 1983 action pro se alleging several constitutional violations stemming from his association with defendant Fulton County Department of Public Buildings ("the Department"). Presently before the Court are cross-motions for summary judgment as well as plaintiff's motion for entry of default judgment and motion to strike. For the reasons stated below, the Court will deny plaintiff's request for summary judgment, will grant in part and deny in part defendants' motion for summary judgment, and will deny plaintiff's -motion for default and motion to strike.

I. Background

On August 28, 1985, plaintiff Roland A. Jones entered into a contract with defendant Fulton County ("the County") to provide maintenance, training, and related services to the Department's Computer Office Automation Information System. The contract was for the period July 2, 1985, through December 31, 1985. Through a series of three other

contracts, plaintiff continued providing his consulting and training services to the Department up through December 31, 1987. Plaintiff did not perform any services for the County in 1988, but on April 12, 1989, he entered into a contract with the County to provide consulting services for the Department for the period January 1, 1989, through December 31, 1989. All of the contracts between plaintiff and the County were approved by the Board of Commissioners of Fulton County ("the Board") and entered on its minutes.

Plaintiff claims that he performed substantial services for the Department on behalf of the County during the period January 2, 1990, to May 2, 1990, for which he has not been compensated. After several attempts to resolve this matter with the Director of Public Buildings for Fulton County, defendant Frank Bockman ("Bockman"), plaintiff contacted certain county commissioners to obtain a hearing before the Board. A hearing was never held and the Assistant Staff Counsel for the County, defendant Jacqueline S. Groover ("Groover"), informed plaintiff on October 5, 1990, that any work he performed in 1990 was unauthorized and considered "strictly voluntary" in nature.

Plaintiff filed this action against the County; the Board; the Department; Michael J. Lomax ("Lomax"), commissioner and Chairman of the Board; Gordon L. Joyner ("Joyner"), Commissioner; Robert J. Regus ("Regus"), Acting County Manager; Bockman; Roland B. Welmaker ("Welmaker"), Deputy Director of the Department; and Groover for violations of the lst, 5th , 13th, and 14th Amendments to the United States Constitution, as well as for violations of the Fulton County Minority Business Enterprise Program. On February 1, 1991, plaintiff filed a motion for summary Judgment on his 5th, 13th, and 14th Amendment claim. A later supplement to his

motion added the lst Amendment claim to plaintiff's request for summary judgment.

By Order dated June 24, 1991, the Court found defendants' responsive cross-motion for summary judgment inadequate because it failed to outline the material facts that defendants contend are not in dispute and because it did not respond to each claim contained in plaintiff's request for summary judgment. The Court ordered the Clerk to strike defendant's cross-motion and directed defendants to refile. Defendants refiled their Motion for Summary Judgment on July 2, 1991. Plaintiff filed a response to defendants' motion and moved to strike portions of the motion for summary judgment.

II. Discussion

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is appropriate when "there is no genuine issue as to any material fact genuine issue as to any material fact . . . and the moving party is entitled to judgment as a matter of law." In *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), the Supreme Court held that this burden could be met if the moving party demonstrates "that there is an absence of evidence to support the non-moving party's case." Id. at 325. At that point the burden shifts to the non-moving party to go beyond the pleadings and present specific evidence giving rise to a triable issue. The Court, however, must construe the evidence and all inferences drawn from the evidence in the light most favorable to the non-moving party. *WSB-TV v. Lee*, 842 F.2d 1266, 1270 (llth Cir. 1988) (citation omitted). Moreover, because the summary judgment standard mirrors that required for a directed verdict, summary judgment is not appropriate unless, "under the governing law, there can be but one reasonable conclusion as to the verdict." *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 250 (1986) (citation omitted).

The Court finds that neither side has successfully presented its argument for summary judgment. Plaintiff's presentation contains numerous exhibits concerning the factual allegations in his complaint, yet he presents no arguments for his right to judgment as a matter of law on any of his claims. Even more surprising, defendants, in their second attempt at summary judgment, argue that the only issue in this action, despite plaintiff's numerous constitutional challenges, is whether plaintiff has an enforceable public contract. Almost as if in passing, defendants argue against all constitutional challenges in one paragraph by stating that 11(t]here is absolutely no proof on the record to support or sustain plaintiff's contentions." Defendants' Memorandum in Support of Motion for Siimmary Judgment at 4.1 In an effort to reach final disposition of this action, the Court will address the adequacy of each of plaintiff's claims below in its ruling on the cross-motions.

A. 5th Amendment Takings claim

Plaintiff moves for summary judgment on his 5th Amendment claim that defendants "seized upon the pretext of declaring (his) services as 'strictly voluntary' and took [his] property (computer application software, database structure, related computer reports, data entry, edit, retrieval, and posting, forms, and communication software)

---

1 The Court finds the parties' attempt at summary disposition of this matter at this point without more adequate and appropriate argument and documentation to be a waste of judicial time and resources. Even in light of plaintiff Is Pro se status, and particularly with trained counsel representing defendants, the Court will not be put in the position of making the legal arguments for any party to an action.

for public use without due process and compensation-" In response, defendants argue summarily that plaintiff has no evidence that his personal property has been taken by the County and submit the affidavit of defendant Bockman testifying that plaintiff removed all of his personal property from the Department and that the County is not in possession of any of plaintiff's belongings. In addition, Bockman states that the County purchased the RBase database management system which was used by plaintiff in performing his contractual obligations. Affidavit of Frank Bockman at 2.

In response, plaintiff has submitted the affidavit of Renee Duckworth ("Duckworth") who, during the time period in question, was the supervisor of the Department's automated data management systems. She states that while the Department owned all of the RBase software,

> the programs for the specialized application of software, such as the Work order System, the Finance and Accounting System, the Electronics Maintenance System, the Project Management System, the Parking Control System, the Vehicle Control and Maintenance, the Time and Expense System, among others, were designed, developed, and produced by Mr. Roland A. Jones. To the best of my knowledge, Mr. Jones never gave ownership of his application software to the department. His logo (JAR) always appeared on the screen of each department computer when the power was turned on.

Affidavit of Mrs. Renee Duckworth, Department of Public Buildings, June 1984 to August 1990, Fulton County Georgia, at 1-2.

After review of the affidavits submitted by the parties, it is apparent that many of the facts material to a determination of whether the personal property2 of plaintiff was taken without just compensation are in dispute. Accordingly, the Court will deny both parties' motions for summary judgment on the 5th Amendment issue.

B. 13th Amendment Involuntary Servitude Claim

One of plaintiff's primary arguments is that the County's admission that plaintiff's work with the Department in 1990 was "strictly voluntary," is conclusive evidence of a violation of the 13th Amendment's prohibition against involuntary servitude. Defendants move for summary judgment on the 13th Ainendment claim on the grounds that there is no evidence that plaintiff was forced into involuntary servitude.

The Court finds that plaintiff has failed to show both that he was forced to work without pay during 1990 and that he was unable to cease working at his own volition. "Inability to avoid continued service is the essential ingredient of involuntary servitude." *Family Div. of Trial Lawyers v. Moultrie*, 725 F.2d 695, 705 (D.C. Cir. 1984). The fact that plaintiff performed services without pay does not Automatically amount to involuntary servitude. Accordingly, the Court will deny plaintiff's motion for

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2 While most 5th Amendment takings cases examine the acquisition of real property, the protection is afforded the personal property of citizens as well. *Weiner v. Fulton County*, 113 Ga. App. 343, 346 (1966).

summary judqment on the 13th Amendment claim and will grant defendants' motion for the same.

C. 5th and 14th Amendment Due Process and Equal Protection claims.

Plaintiff claims that defendants violated the 5th and the 14th Amendments by unilaterally declaring his services voluntary and by not permitting plaintiff to appear before the Board to discuss his services. Defendants' primary argument in response to plaintiff's due process charges, although not articulated as a due process argument in their papers, is that because plaintiff did not have an enforceable public contract with the County, he did not possess a property interest protected by the 5th and 14th Amendments. Plaintiff acknowledges there was not a public contract and points to a purchase order signed by the Deputy Director, defendant Welmaker, authorizing plaintiff's services. In any event, plaintiff argues that an implied contract existed between the parties that should be honored by the Court.

Essential to a claim of denial of due process is infringement of a property or liberty interest. In order for the Court to find a property interest in plaintiff's services for the County, plaintiff must have a "legitimate claim of entitlement" supported by contract or state law. Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701 (1972). Georgia law provides that "(a] county is not liable to suit for any cause of action unless made so by statute." O.C.G.A. S 36-1-4 (1987). With regard to suits on contract, 11(a]ll contracts entered into by the county governing authority with other persons in behalf of the county shall be in writing and entered on its minutes." O.C.G.A. S 36- 10-1 (1987). Such a matter, therefore, must be passed upon by the legislative body and spread upon the minutes of that body. *Overlin v. Boyd*, 598 F.2d 423, 424 (5th Cir. 1979); *Wilson v. Strange*, 235 Ga. 156

(1975).

A county contract otherwise valid is not rendered void by not being entered on the record, rather it is unenforceable until it is recorded and mandamus will lie to require its recording. *PMS Construction Co. v. DeKalb County*, 243 Ga. 870, 871 (1979). In addition, a plaintiff must prove an express contract with a county in order to recover for breach of contract and no recovery may be had for an implied contract. Id. at 872.

It is undisputed that no contract between plaintiff and the County exists on the Board minutes.3 The Court is compelled to find that plaintiff does not have an enforceable contract with the County and, therefore, do not possess a protected property right under the 5th and 14th Amendments. Accordingly, the Court will deny plaintiff's motion for summary judgment on these claims and will grant defendants' motion.

D. 1st Amendment Right to Petition the Government

It appears that plaintiff's lst Amendment claim consists of allegations that defendants Joyner, Lomax, and Groover took action to suppress plaintiff's lst Amendment right to petition the government for redress of his grievances. Plaintiff sent letters to Joyner and Lomax requesting that he

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3 The parties do dispute whether a purchase order for plaintiff's services was entered in January 1990. However, should plaintiff wish to enforce this purchase order, he must either amend his complaint to seek mandamus for entry of the agreement on the minutes, or pursue a separate action f or mandamus in state court. PMS, 243 Ga. at 872. If plaintiff succeeds in having his contract entered on the minutes, he could then seek restitution for the value of materials furnished and services rendered. Id. at 872-73.

be placed on the Board's agenda to discuss payment for his services. In addition, he requested in writing to county Manager Regus that he be placed on the Board agenda. Defendant Groover, and later County Attorney Elizabeth Long, eventually informed plaintiff that his only avenue of relief was through the Court.

In plaintiff's supplement to his motion for summary judgment, he argues for summary judgment on the lst Amendment claim by merely stating as follows:

> While a hearing before the (Board) can only be obtained through Board members or the County Manager, and though due process before the (Board) was promised on November 27, 1990, and was subsequently requested through a Board member three times, and one time through the County Manager, due process and my right to petition the government were illegally denied by a staff advisor who was not empowered to govern in Fulton County.

Plaintiff's Supplement to Motion for Summary Judgment at 2 (citations omitted). Defendants do not even attempt to respond to plaintiff's lst Amendment claim in their cros motion, nor do they include the claim in their request for summary judgment.

Based on the insufficient argument presented by all parties, the Court cannot find as a matter of law that plaintiff was denied his rights to petition the goverrmen for redress of his grievances. In fact, it appears that plaintiff did in fact petition the County and certainly has exercised his right of access to the courts in filing the present action. See *Hudson v. Palmer*, 468 U.S. 517, 104 S.Ct. 3194 (1984).

Accordingly, the Court will deny plaintiff's request for summary judgment on his 1st Amendment claim.

III. Conclusion

Although some of plaintiff's claims have been disposed of by this order, it is obvious to the Court that this is a matter in which the parties should attempt to reach a reasonable settlement of the remaining claims. The Court suggests that the parties consider submitting this matter to a Court appointed arbitrator/mediator for consideration. The presence of trained and objective third party may assist the parties in reaching a just resolution.

For the reasons stated above, the Court DENIES plaintiff's Motion for Summary Judgment [#4-1] and GRANTS IN PART and DENIES IN PART defendants' Cross-Motion for Summary Judgment (#IO-1]. In addition, the Court DENIES plaintiff's Motion to Strike [011-1] and Motion for Entry of Default [#12-1]. The Court DIRECTS the parties to submit their positions on the possibility of arbitration in this matter to the Court within 20 days of the date of this order.

IT IS SO ORDERED, this 27th day of March, 1992.

s \ Marvin H. Shoob.
Marvin H. Shoob
Senior United States District Court Judge
Northern District of Georgia

APPENDIX M-- DISTRICT COURT ORDER # 3, DATED SEPTEMBER 30, 1993.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROLAND A. JONES,
Plantiff

V.

FULTON COUNTY et al.,
Defendants,

CIVIL ACTION
1:91-cv-0078-MHS

ORDER

This matter is before the Court on defendants' third motion for summary judgment, plaintiff's renewed motion for summary judgment, and several miscellaneous motions. For the reasons set forth below, the Court denies defendants' motion and denies plaintiff's motion.

Background

Plaintiff, who is proceeding pro se, filed this action in January 1991 under 42 U.S.C. 1983, alleging several constitutional violations stemming from his association with defendant Fulton County Department of Public Buildings ("the Department"). From 1985 until 1989, plaintiff entered into a series of annual contracts with defendant Fulton County to provide maintenance, training, and related services to the Department's Computer Office Automation Information System. Plaintiff claims that in 1990 he performed substantial services for the county under a purchase order. He was never compensated for those services. Plaintiff also alleges that Fulton County took without compensation his computer software and his

computer application software.

On February 1, 1991, plaintiff filed a motion for summary judgment on his Fifth, Thirteenth, and Fourteenth Amendment claims. In a later supplement to his motion, he added his First Amendment claims to the motion. Defendants filed a responsive cross-motion for summary judqment which the Court denied on June 24, 1991, as inadequate because defendants failed to outline the material facts that they contended were not in dispute and because defendants did not respond to each claim in plaintiff's motion for summary judgment. With permission of the Court, defendants refiled on July 2, 1991, and plaintiff responded.

In its Order of March 27, 1992, the Court granted defendants' motion for summary judgment on plaintiff's claim that he was deprived of his property without due process when the County failed to pay him for services he claimed he provided under the purchase order. The Court also granted defendants' motion for summary judgment on plaintiff 's claim under the Thirteenth Amendment that the County's refusal to pay for his services constituted involuntary servitude. The Court, however, denied defendants' motion for summary judgment on plaintiff's claim that defendants unlawfully took his personal property without compensation and on plaintiff's First Amendment claim. The Court denied plaintiff's motion for summary judgment on each of the claims. In summary, following the Court's ruling, on plaintiff's Fifth Amendment takings claim and his First Amendment claim remain in this action.1

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1 Although the Court ruled on several of the issues raised by the parties, the Court again found defendants' and plaintiff,'s legal arguments and documentation inadequate. See March 27, 1992 Order.

At the request of the Court, the parties submitted the dispute to a mediator but were unable to reach a resolution. The Court then permitted the parties to conduct more discovery and file new motions for summary judgment on the remaining issues. These motions are presently before the Court.

Defendants' Motion for Summary Judgment.

At the outset, the Court notes that in their third motion for summary judgment, defendants again fail to comply with the rules of this Court. Any motion that includes allegations of fact must include supporting affidavits. Fed. R. Civ. P. 56 (e), (f); Local Rule 220-1, 220-5 (b) (3) ("All document and record material relied on by a party . . . shall be clearly identified for the Court.") Defendants refer repeatedly to the sworn statements of Clarence Reid and Dennis Burns, yet defendants fail to attach these statements or any other evidence to their motion. Thus, defendants' arguments opposing the factual basis of plaintiff's Fifth Amendment takings claim are only unsubstantiated allegations that cannot support a motion for summary judgment. The Court will, however, briefly address defendants' substantive arguments on this issue.

The just compensation clause of the Fifth Amendment prohibits private property from being taken for public use without just compensation, and the Fifth Amendment applies to state or local action through the Fourteenth Amendment. *Rymer v. Douglas County*, 764 F.2d 796, 800 (llth Cir. 1985). A permanent physical occupation of property through some state usage, absent a formal proceeding, may also be a taking. Id. (citing *Loretto V. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982)). The Fifth Amendment, however, does not protect individuals from the arbitrary use of government power. *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980).

Plaintiff contends that defendants took his software, computer application software, database structure, related computer reports, data entry forms, and communication software without compensation. Defendants argue that plaintiff removed all of his personal property from the department and that the County was not in possession of any of plaintiff's belongings. Defendants also argue that the contracts under which plaintiff worked conferred on him no property interest in the systems he designed.

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is appropriate when there is "no genuine issue as to any material fact . . . and the moving party is entitled to judgment as a matter of law." In *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), the Supreme Court held that this burden could be met if the moving party demonstrates that there is "an absence of evidence to support the non-moving party's case." Id. at 325. At that point, the burden shifts to the non-moving party to go beyond the pleadings and present specific evidence giving rise to a triable issue. Id. at 324.

The Court, however, must construe the evidence and all inferences drawn from the evidence in the light most favorable to the non-moving party. WSB-TV v. Lee, 842 F.2d 1266, 1270 (11th Cir. 1988). Moreover, because the summary judgment standard mirrors that required for a judgment as a matter of law, summary judgment is not appropriate unless "under the governing law, there can be but one reasonable conclusion as to the verdict." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986) (citation omitted).

Defendants allege that, under the contracts, plaintiff agreed to design and implement certain computer systems and that plaintiff had no property rights in what he

developed on the job. Plaintiff offers evidence, however, that he brought in specialized software to assist in designing these programs and that software and the other items are still in defendants' possession. (See Duckworth Aff.) Defendants have failed to offer evidence showing what property belonged to plaintiff. Defendants have also failed to argue or show that if any of plaintiff's property was retained by defendants, the holding of plaintiff's property was an arbitrary act of a county employee and was not done pursuant to some implied county authorization. In light of the conflicting evidence on plaintiff's Fifth Amendment claim, summary judgment is not appropriate.

Plaintiff Is Renewed Motion for Summary Judgment

Plaintiff's "Motion to Renew Plaintiff's Motion for Summary Judgment" raises again several issues disposed of by the Court in its March 27, 1992, Order. For instance, plaintiff argues again that he should recover for the services he provided under the 1990 purchase order although the Court granted defendants' motion for summary judgment on that issue. Plaintiff also seeks summary judgment on his Fifth Amendment claim that defendants took his personal property -- certain computer property -- without compensation. Again, however, plaintiff has failed to produce evidence showing that there is no disputed issue of fact as to whether defendants improperly retained plaintiff's property. Accordingly, the Court denies plaintiff's motion to renew his motion for summary judgment.

Conclusion

The Court GRANTS plaintiff's unopposed motion to maintain case as originally filed, that is as a non-jury case C#19]; DENIES AS MOOT plaintiff's motion to defer discovery C#20); and DENIES plaintiff's motion to compel a response from defendant Fulton County Board of Commissioners. The Court GRANTS plaintiff's motion to

withdraw plaintiff's motion to compel [#27-1) and accordingly WITHDRAWS plaintiff's motion to compel C#24). The Court DENIES plaintiff's motion to strike two depositions [#27-2]; because those depositions were not submitted to the Court, there is no need to strike them.

Finally, the Court DENIES plaintiff's renewed motion for summary judgment [#22] and DENIES defendants' motion for summary judgment C#23). The Court DIRECTS the parties to file their pretrial order within thirty days of this order. The Court DIRECTS the parties to file no further motions for summary judgment.

The Court DIRECTS plaintiff to correspond with the Court only by motion and to cease sending copies of his correspondence with defendants' counsel to the Court. The Court DIRECTS both parties to comply with all orders of the Court and the Local Rules. Failure to comply will result in dismissal of this action or striking of defendants' answer.

IT IS SO ORDERED, this 30th day of September, 1993.

s/ Marvin H. Shoob
Marvin H. Shoob, Senior Judge
United States District Court
Northern District of Georgia